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Paraprofessionals and Issues of Public Regulation

Prepared by
Theodore Marmor and William D. White
for
The Professional Organizations Committee

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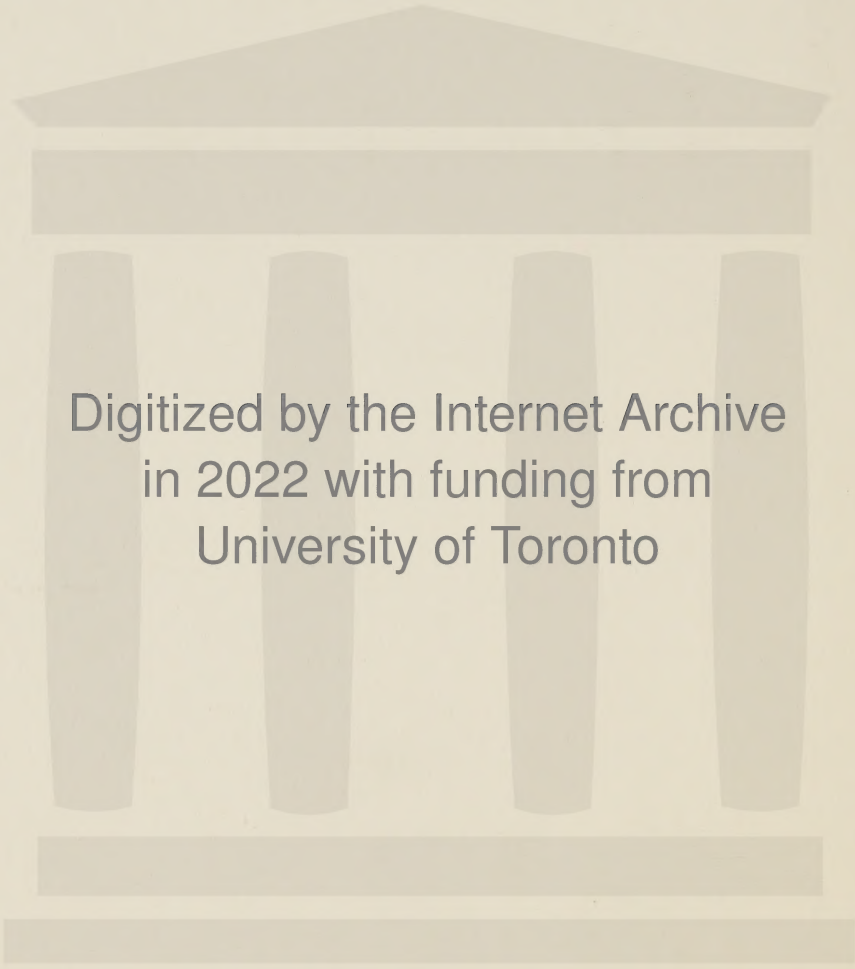
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PARAPROFESSIONALS AND ISSUES OF PUBLIC REGULATION

A Working Paper Prepared by

Theodore Marmor, University of Chicago

and

William D. White, University of Illinois, Chicago Circle

assisted by

Bruce R. Thomas

for

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The Organization of the Report: Introduction

Our charge is to discuss the issues of paraprofessional regulation in the four professions under review by the Ontario Professional Organizations Committee. We have done so in a report consisting of two chapters.

Chapter One is theoretical. It suggests ways to think about the idea of paraprofessionals and about the regulatory implications of different perspectives on them. We address the topics under a number of separate headings. The first is an extended discussion of the meaning of paraprofessionalism; the second briefly describes the occupational content of paraprofessionalism; the third covers regulatory theory as it applies to paraprofessionals; the last provides an historical sketch of paraprofessional developments, including its conflicts and continuing tensions.

Chapter Two discusses in some detail how the theoretical perspectives of Chapter One do or do not emerge in the four professions under review. The questions we address are: What governmental policy best advances the public's interest in the quality, distribution and cost of the services here reviewed? Where certification or licensure is desirable, by whom should it be administered? In particular, what are the appropriate roles for the state, the "senior" professions and the paraprofessions? Is it desirable that paraprofessionals be principals in separate occupational firms or principals in the firms of "senior" professionals?

At the outset of our study, we had hoped to discuss in some detail the effects of public regulatory policies on a range of specific issues, such as the distribution, cost and quality of services, the feasibility of manpower planning, and efficiency of task allocations. We have been hampered in our consistent ability to cover each of these topics; the major problem is the absence of detailed cost-benefit analyses that would enable us to make sound judgments and predictions about specific policy choices. Our paper, therefore, focuses on efficiency of manpower utilization, occupational mobility, cost and, where possible, quality of services; we have not been able to pursue in any significant way questions about manpower planning, and our discussion of cost, quality and distribution issues is often closely circumscribed.

We need finally to issue a reminder, mostly to our selves, but also to our readers. We are treating in this paper fundamental questions of work: its organization, its rewards, its status. Work is a fundamental human issue. In our examination of this issue, we use an abstract vocabulary and a set of disciplinary concepts; such language may well diminish or obscure the human vibrance of the issues in question. We feel compelled, therefore, simply to say that however much our discussion is abstract or technical, we have sought to be always mindful both of the basic human concerns for the dignity and satisfaction of work that underly all the issues we discuss, and of the intense grievances they express.

GLOSSARY

ENGINEERING

APEO - Association of Professional Engineers of Ontario

OACETT - Ontario Association of Certified Engineering Technicians and Technologists

ARCHITECTURE

OAA - Ontario Association of Architects

AATO - Association of Architectural Technologists of Ontario

LAW

Law Society - Law Society of Upper Canada

Institute - Institute of Law Clerks

CLW - Community Legal Worker

ACCOUNTING

ICAO - Institute of Chartered Accountants of Ontario

CGAAO - Certified General Accountants Association of Ontario

SMAO - Society of Management Accountants of Ontario

C.A. - Chartered Accountant

C.G.A. - Certified General Accountants

R.I.A. - Registered Industrial Accountant

Chapter One

I. Professions and Paraprofessions: Conceptual Questions

How can public authorities most usefully think about paraprofessions? This is the central question addressed in this section of the report. It is easier to pose the question than to answer it. The topic of paraprofessionalism is confused, controversial, and complicated.

The complications begin with the fact that understanding the paraprofessions requires prior understanding of the professions. Our research discloses three broad approaches to the professions. The first accepts the categories of the groups now understood to be professions and assesses the degree to which their claims correspond to their activities. Such is the thrust of the paper by Tuohy and Wolfson: a critical view of the idealized and actual roles of the occupations authoritatively designated as professional.[1]

A second view is "essentialist." It abstracts the fundamental character of the professions and defines what it is that separates them from other occupational forms. Such an approach is a tradition in Anglo-North American sociology; it distinguishes among professionals, semi-professionals and non-professionals.[2] (It is possible to use "profession" and "occupation" interchangeably; passport controllers, for example, use only one category, "occupation/profession." But

such usage defines away all the contentious issues regarding professional status and its regulation.)

The third approach regards the creed of professionalism as a form of occupational control.[3] The primary category is defined as the occupation: a set of activities done in the marketplace within a given industry, with a division of labor sufficient to give proper names to the providers of the occupational service. While there are many occupations, relatively few seek to use legally-sanctioned professional organizations to control entry, regulate conduct, define acceptable levels of quality and, in some cases, assess the state of the occupation's contribution to the larger society.[4]

We consider this third view the most fruitful for our examination of paraprofessional regulation. It treats as problematic which occupational groups seek professional status, how they fare over time, and what their effects are on the quality, cost, distribution and impact of the occupations' services. It directs our attention away from the historical claims about "true" professional services and thus opens up the topic of what counts as a paraprofession in the light of efforts to use professional status to achieve and maintain control over occupational conditions.

The view of professions as a means of occupational control provides us with a starting point. We can then consider "professionalism" not simply as a way of organizing occupations, but also as a way of organizing industries. Thus we seek to analyze not only the specific problems of using paraprofessionals, but also the way in which these

problems relate to overall systems of labor market organization in industries producing professional services.

Several terms used to describe labor markets merit definition. One is labor market segmentation. It denotes labor markets with little vertical or horizontal mobility for workers between occupations (segments of the labor market); workers tend to enter these occupations directly from the open labor market outside firms. The second term is internal labor markets; it denotes labor markets within firms, as opposed to open or external markets. In segmented labor markets, workers may have a good deal of mobility between firms within one industry. But there is little mobility between occupations and workers tend to spend most of their careers in the same types of jobs. In contrast, firms in markets organized around internal labor markets typically promote from within and have well developed career ladders for workers, while mobility between firms may be low.[5]

Segmented and internal labor markets can be viewed as responses to different types of market conditions. But they also provide different methods of organizing the same markets. Taken together, these concepts give us a useful basis for discussing the structure of labor markets for professionals and paraprofessionals and for considering ways in which these labor markets might be reorganized to increase efficiency and occupational mobility.

A. Defining the Paraprofessional

Our topic is not only complicated by its logical connection to the broader subject of professions, but also confused by at least three different meanings of the term paraprofessional.

The most common meaning regards paraprofessionals as subordinate employees of professionals; paraprofessionals do some but not all of the tasks of professionals, and under their supervision. By this definition, a legal secretary drafting simple documents for a lawyer would be a paraprofessional, whereas a law firm's copy machine operator would not. Within this definition, final responsibility to the client clearly rests with the professional. The internal division of labor within firms may vary widely with the character and experience of the paraprofessionals, but the supervisory posture is assumed: the paraprofessional serves the professional, and issues of quality are presumed to depend on the professional's skill, experience and competence. The special and theoretical training of the professional creates the crucial line between profession and paraprofessional; it is the professional's command of theory, and not the facts of experience and competence, that justifies his superior role. There may be questions about whether the entry qualifications for authorized professional status justify this distinction, but its legal force is clear. (The very word para , we might recall, means "along with" or "beside". The subordinate paraprofessional works beside the superordinate professional.)

The second meaning of paraprofessional stresses the "partial" rather than the "inferior" aspects of the role: paraprofessionals lack some characteristic which the idealized conception of the profession requires. This definition may denote the incomplete provider: accountants who have a variety of skills, but lack some key educational prerequisite, or nurses who do some but not all of what a doctor does because they lack an appropriate credential and training. Whatever the ideal type of the professional employed, the paraprofessional is deficient in at least one crucial respect and is so denied the superior designation. This usage can slide over into a distinction between occupational groups that public authorities have designated as professions. Within this meaning, "semi-professions" and paraprofessions become synonymous. Some writers have treated social workers, teachers and nurses in this way, thus setting them off from the classic definition of the learned, independent professions.[6] In this second sense, paraprofessional status is not conditioned on employee-employer relationships.

A third sense of paraprofessionalism further compounds confusion: the concept of paraprofessional services rather than persons. When a person or firm supplies the same services available from professionals but in a non-professional setting, the label of paraprofessional may be applied. This is a definition less common than the first two, but there is increasing evidence of concern with it. An example is the bank that offers advice about tax laws to its regular customers. The issue for the profession is the quality of the legal advice given by non-lawyers in a setting different from the traditional lawyer-client

relationship. We question whether the paraprofessional topic ought to encompass this third view, but we are compelled to acknowledge that paraprofessional issues sometimes reflect it.

Finally, confusion is increased by the need to discuss paraprofessional issues as they arise in four distinctive occupations that have been somewhat arbitrarily grouped together as professions. Law, architecture, engineering and accountancy are given to us as the units of analysis; the differences among them compound the difficulty of discussing the same phenomena when referring to paraprofessional services or persons. It is a matter of one term used in three senses and applied to four different industries.

The controversial character of paraprofessionalism arises in part from the broad disputes over professional self-regulation. Fierce debate continues about what, if anything, should be done to change the existing organization of professionals. We will discuss the central arguments in this debate, but need first to sketch briefly the industries and paraprofessionals under review. Our sketches are drawn from materials submitted to and commissioned by the Professional Organizations Committee.

B. The Industries and Paraprofessionals Under Review

Engineering[7]

Some 43,000 engineers are licensed in Ontario; the engineering industry also includes roughly 9,600 technical personnel certified by the Ontario Association of Certified Engineering Technicians and Technologists (OACETT), and a much larger number of technical program graduates who are not certified.

About 18% of engineers practise in engineering firms; the remainder are employed in other private sector firms or in government agencies. Most engineering firms are highly specialized. The firms tend to be small, and average three to four engineers, although mixed firms of engineers and architects are somewhat larger. A single governmental or industrial employer may well employ several hundred engineers.

Engineering manpower divides into three categories: professional engineers, engineering technologists and engineering technicians. The latter two are usually termed paraprofessionals; their deployment throughout the industry is widespread; the functional boundaries separating professional from paraprofessional are not precise.

Regulation of professional engineers began in 1922 with the passage of a certification law that reserved the title of "professional engineer", and created the Association of Professional Engineers of Ontario (APEO) as a self-regulating body which certifies personnel. Fifteen years later, the act was amended to require licensure of engineers. A 1947 amendment to The Professional Engineers Act enabled engineering firms to incorporate.

Qualification for licensure can be achieved either by examination and experience or by education and experience. The principal entry route is through a university degree program. The engineering regulatory legislation incorporates a "saving" clause that permits architects to provide engineering services in the course of their architectural work. As noted below, there is a reciprocal clause in The Architects Act.

Mobility within engineering is somewhat circumscribed by both educational requirements and the nature of demand-supply relationships within the industry. Some analysts of the industry argue that the relatively abundant supply of engineers creates patterns of work substitution, whereby engineers sometimes perform technologists' roles, while technologists may perform tasks considered the domain of technicians. Technicians in turn may be pushed into competition with skilled trades.[8]

Topical issues within engineering focus on the role of paraprofessionals within the industry and their relationship to the public (as in the case of paraprofessional firms); and on questions about the efficient allocation of manpower.[9]

Architecture[10]

In Ontario, 1,700 architects are registered to practise architecture. Roughly 80% work in private firms offering architectural services; the rest work for other private sector firms or for government. Architects in private practice are spread among some 500 firms, about 400 of which are in active practice. Fifty of these firms account for over 90% of the architectural work in the province; twenty perform the bulk of the institutional work.

Architectural firms are small. In the Professional Organizations Committee's sample of 290 architectural firms, the average number of architects per firm was three and the average total staff was between six and seven. In engineering firms that employ both architects and engineers, the averages were slightly over 18 professionals, and slightly under 60 total staff.

The preponderance of architectural work in Ontario is undertaken for public and private institutions and companies. Buyers on the whole appear to be large and experienced. The architectural industry is apparently quite competitive, the more so when engineering firms are included within the competitive sphere in building design.[11]

Three forms of credentialled personnel work in architecture: registered architects, architectural technologists and architectural technicians. An emerging fourth group is called building technologists. The two principal organizations are the Ontario Association of Architects (OAA) and the Association of Architectural Technologists of Ontario, (AATO).

Government certification began in 1890 through a law that created the OAA as a self-regulating body that administered a certification system based on exams and experience. In 1930, a mandatory licensure law was passed, and in 1935, the profession became fully self-regulating under the OAA. Regulatory law has remained essentially unchanged since 1935; it confines the practice of architecture to licensed architects with a number of exceptions including one allowing engineers to provide architectural services in the course of their engineering work. Registration as an architect requires a university degree, three years experience and completion of courses and examinations prescribed by the OAA. Architects, unlike engineers, are not allowed to incorporate.

The licensure law makes no provision for the regulation of paraprofessionals. Paraprofessional technical personnel work primarily in the provision of drafting and support services. The issue of paraprofessional firms has arisen in recent years; it remains an unresolved issue. The creation of paraprofessional firms and of bridging arrangements that would abet the transition from para to full professional status constitute the two main paraprofessional issues.

Law[12]

There are about 12,300 licensed lawyers in Ontario. Roughly 80% are in private practice, 15% are employed in education, government and other organizations, and 5% retired or out of province. According to the latest figures, the province has just under 5,300 law offices; roughly half consist of sole practitioners, 40% consist of two to four lawyers, and only 2% employ ten or more lawyers.

The labor force in the legal services industry includes four principal groups: lawyers; legal paraprofessionals within law firms, such as law clerks and legal secretaries; community legal workers, and office support personnel. The total size of the labor force can only be interpolated from 1971 data; it is probably between 18,000 and 20,000.

Within the last decade, the numbers of paraprofessionals has increased considerably. Within the same time period, a new category of paralegal has emerged, outside the traditional law firm, now known as the community legal worker. Their numbers can only be estimated; a reasonable guess is there are between 50 and 100 community legal workers currently employed.

The organizational structure of the legal services market includes 3 main groups. The Law Society of Upper Canada is the lawyers' professional body. The law clerks are organized through an Institute of Law Clerks, and the legal secretaries through the Metropolitan Toronto Legal Secretaries Association. The community legal workers have several informal organizations.

Regulation of law in Ontario is vested in the Law Society of Upper Canada, which controls admission, conduct and discipline of lawyers. No one may practise law without being a member of the Society. Entry requirements entail a combination of law school education and articling.

Clarification of roles, accountability and responsibilities and recognition of paraprofessional status constitute the principal paraprofessional issues. Both law clerks and legal secretaries are concerned to achieve recognition of their respective occupations, in a manner largely patterned after that of the Law Society. Community legal workers are concerned to clarify the lines of accountability within their work, and to secure an adequate funding base.

Accountancy[13]

There are three major accounting designations in Ontario: "Chartered Accountant", "Registered Industrial Accountant", and "Certified General Accountant", awarded by the Institute of Chartered Accountants of Ontario, the Society of Management Accountants of Ontario and the Certified General Accountants Association of Ontario respectively. Together, the memberships of these organizations comprise some 18,500 Ontario accountants. Of the approximately 11,000 Ontario-based C.A.'s, just under half practise in accounting firms; the remainder are employed in industry, commerce and government. R.I.A.'s and C.G.A.'s, on the other hand, are predominantly employed

in industry, commerce and government. Under 5% of the 4,700 R.I.A.'s, and under 12% of the 2,800 C.G.A.'s practise in accounting firms.

In approximate numbers, 6,140 accountants (5,680 C.A.'s, 70 C.G.A.'s, and 390 others) are licensed to perform "public accounting" in Ontario, as described below. These accountants are employed in the just over 3,500 firms providing public accounting services in Ontario. Over 40% of all chartered accountants work in large firms that employ 150 or more accountants; another 10% work in firms with between 26 and 150 accountants. Accounting students compose roughly one-third of the public accounting labor force; paraprofessionals account for roughly 15%. (Paraprofessionals are considered to be employees who do not hold any accountancy designation, are not students but who do assist in the provision of services to clients.)

The regulation of accountancy began in 1950 with The Public Accountancy Act; it named two professional accounting associations as qualifying bodies: the Institute of Chartered Accountants of Ontario (ICAO) and the Certified Public Accountants Association (CPAA). For a number of years, the Certified General Accountants and the Certified Public Accountants had dual membership, and hence CGA members had access to the public license. However in 1962, the CPAA merged with the ICAO to create one single qualifying body, the ICAO. Licenses are issued by a body called The Public Accountants' Council, 12 of whose 15 members are appointed by the ICAO.

Entry requirements within accountancy vary from one professional organization to another; all, however, combine education, examination and experience. The ICAO requires a university degree; the CGAAO and the Society of Management Accountants of Ontario (SMAO) require high school diplomas.

The accounting functions that require licensure are the preparation and/or issuing of external audits or other signed financial statements as an independent accountant. Functions that do not require licensure include internal audits, unsigned financial statements, bookkeeping, business and financial advice, management and industrial accounting, and a variety of accounting-based management services. To acquire a license, an accountant must either be a member of the ICAO, or have been licensed under the 1950 Act, or have been in 1962 a member of the CGAAO and have met certain other requirements.

Programs to provide mobility within accountancy are not at present highly articulated; but the absence of such programs does not appear to be a pressing issue. Bridging provisions for R.I.A.'s and C.G.A.'s into the C.A. program have been developed by the ICAO but not widely used. The ICAO has also proposed the development of a paraprofessional training program. The principal issue within accountancy is a variant form of mobility; it concerns access to the public accountancy license, and involves the contention of certain accountancy bodies that access to the license is too severely limited.

* * *

These descriptive sketches provide the factual setting for the discussion that follows. Our discussion is divided into two sections. The first presents a theoretical analysis of the issues involved in regulating paraprofessionals. The second discussed the historical roots of paraprofessionalism and examines their relationship to the occupations under review in Ontario.

II. The Issues of Regulation

This section presents the theoretical arguments for regulation of paraprofessionals. We use economic theory to discuss the main arguments for regulating professionals -- and then consider the extent to which these arguments apply to paraprofessionals. We will consider not only the impact of various types of regulation on specific occupations, but also the general implications for the industries in which paraprofessionals are employed.

In economic theory, social welfare provides the theoretical basis for regulation; effective regulation should result in improved social well-being. Most formal discussion of the impact of regulation focuses on efficiency questions, but equity issues are often important, however implicitly.

Regulatory theory focuses on three forms of efficiency issues: monopolies that may restrict output below competitive levels in order to increase profits; imperfect information that makes it difficult for buyers or sellers to make informed decisions; market decisions by consumers that have external, non-market effects on the welfare of others. (An example of this kind is an individual suffering from an infectious disease whose decision to see or not to see a doctor affects the health of others.)

We begin by considering the degree to which these efficiency issues arise in the case of independent professionals, and can then move to consider their applicability to the case of paraprofessionals.

In the absence of regulation, markets for professionals tend to be competitive. As Spence suggests, economic arguments for regulating

professionals usually focus on problems with imperfect information and with externalities.[14] The issue of information arises because professional services are often complex; consumers who do not regularly buy services in substantial quantities cannot make judgments about their quality without expensive investments in information. They may well suffer substantial losses if they make mistakes. Even if they do not make mistakes, there may be externalities, and consumption of low quality services may have a major impact on other consumers. An example, already cited, would be the case of an individual suffering from an infectious disease who chooses either no doctor, or a poorly qualified one.

Tuohy and Wolfson also suggest more subtle arguments for regulation that involve the trust relationship between consumers and professionals who act as their agents.[15] Mutual trust is essential for most agents to function effectively. Thus, if a patient does not trust his physician enough to tell him what is wrong or to accept his advice, the physician will be hard put to treat the patient. Professionalism can internalize value systems which foster trust by creating a corporate identity in an occupation and which encourage members to place the standing of the occupation ahead of their own immediate personal interests. Free market competition, with its emphasis on individual advancement, may erode these values, undermining the trust relationship, and, as Spence suggests, may drive high-quality producers out of the market.[16]

When problems of imperfect information or of externalities arise, government has two basic means of protecting social welfare. It can regulate inputs used in producing services; or it can regulate the quality of services produced or the outcomes of these services.

The traditional method of input regulation is to control personnel; such regulation provides a way of setting minimum competence standards for people who produce professional services in lieu of direct regulation. It comes in two forms: certification and occupational licensure.

Certification laws reserve the use of an occupational title for people who meet prescribed standards. But they do not restrict people who are not certified from engaging in an occupation, as long as such people do not claim to be certified. Occupational licensure laws not only reserve the use of a title for people who meet prescribed standards, but also make licensure a prerequisite for practice. Thus, for example, only a licensed lawyer can legally practise law, and only a licensed engineer can legally practise engineering in Ontario. No one else can legally sell these services to consumers. In short: certification reserves a title; licensure reserves a market.

Since licensure laws force consumers to buy services from licensed personnel, they can have a potentially significant impact on the prices of services provided by licensed groups. Critics have suggested that these price effects may create an economic incentive for members of an occupation to seek licensure independent of any impact it may have on

the welfare of consumers. Thus Milton Friedman argues that certification does permit consumers to exercise their freedom of choice, while licensure does not.[17] As a result, they claim that certification can lead to more efficient allocation of resources, especially if government standards do not fully reflect the ways and needs of consumers. They argue that certification is a more desirable form of regulation than licensure in a democratic society -- unless there are significant diseconomies that result from use of unqualified personnel.

Output regulation is rare, although a few examples, such as building codes, do exist. Malpractice suits provide an alternative method of controlling the quality of services -- for they allow buyers to recover damages if professionals give inferior service that results in an unfavorable outcome. Indirectly, malpractice suits presumably encourage professionals to provide high quality services to avoid being sued.[18]

The discussions of input and output regulation all focus on the agency relationship between professional and client, and on problems of imperfect information, externalities and the trust relationship.

The balance of this section considers the degree to which these arguments also apply to the three categories of paraprofessionals which we have discussed. We can begin this discussion by considering paraprofessionals who work independently of professionals and who fit our second definition of paraprofessionalism by their lack of some crucial attribute or training.

When such paraprofessionals act like professionals, they are usually subject to forms of regulation that are also used for professionals. In some cases, they work under the administrative supervision of institutions. Whichever is the case, such paraprofessionals do not pose serious theoretical difficulties.

But applying the traditional regulatory arguments to subordinate paraprofessionals -- our first definition of paraprofessional -- is another question. Such paraprofessionals work under the supervision of professionals. Licensure laws presumably establish a range of professional competence, including the ability to evaluate the quality of services provided by subordinate paraprofessionals. In this case, there is no need to license paraprofessionals; professionals should be able to judge whether or not the paraprofessionals are doing an adequate job.

There may be a better case for certification on the grounds that it helps the supervising professionals to identify competence. However, even this argument seems weak if professionals are regularly involved with paraprofessionals. While it is true that evaluating the quality of on-the-job training is sometimes difficult for professionals it is equally difficult for licensing boards or self-regulating groups. Government certification laws usually end up emphasizing formal training programs, in which case the degree itself should be a sufficient credential.

If professionals themselves are licensed and problems arise with the quality of services provided by subordinate paraprofessionals, then it follows that either the professionals are not competent to supervise

paraprofessionals or that they lack supervisory incentives. In the first case, the appropriate response is to upgrade standards for professionals, rather than to license paraprofessionals and thereby introduce additional rigidities into the labor market. In the second case, one possible response is to create incentives for professionals to supervise paraprofessionals. Another is to shift responsibility for supervision.

This second problem has lead critics such as Hershey to advocate institutional licensure as an alternative to occupational licensure.[19] Institutional licensure entails governmental regulation of institutions like hospitals or law firms that provide professional services; the individuals providing service are not licensed. But this approach has its own problems. In the absence of adequate modes of outcome regulation, standards for institutions are likely to end up with a focus on inputs, particularly manpower inputs. The net result is then not significantly different from occupational licensure. In fact, if manpower standards are based on either public or private systems of certification for these personnel, institutional licensure may amount to an indirect form of occupational licensure.

If institutional licensure actually prompts reorganization of the production process, the results may not be desirable either. In the interests of improving the supervision of paraprofessionals, one might transform professionals into administrators, or replace them with non-professional managers. But to do so may undermine the trust relationship that professionals have traditionally had with their clients and so destroy the value systems that professionalism

internalizes. For example, increasing administrative control over professionals may decrease their sense of responsibility for the welfare of clients. This could result in a decline in the quality of services provided by professionals which may prove difficult to deal with through administrative measures.

Policy makers are left with a dilemma. If there are problems with coordinating the services of paraprofessionals and maintaining the quality of these services in the absence of professional supervision, then licensing paraprofessionals seems like a clumsy solution. But reorganizing the production process may threaten the quality of services produced by professionals themselves.

The use of civil liability to solve quality problems with subordinate paraprofessionals is likely to run into similar problems (and may actually create a demand for licensure laws.) Professional supervision implies full liability for the actions of subordinates. If professionals are not held liable, then quality problems with paraprofessionals may generate pressure to use occupational licensure as a means of legally identifying their responsibilities. Malpractice suits might also create pressure for institutional licensure as a means of identifying the responsibilities of institutions.

In the case of the third definition of paraprofessionals -- where professional services are produced in a non-professional setting -- institutional licensure clearly appears more appropriate, because the services are produced in most cases by firms. This argument of course assumes that firms producing professional services in a non-professional mode should be allowed to exist at all. Such firms can produce many

specific kinds of services, particularly simple routine ones, as well as or better than professionals. They may also be able to produce them more cheaply, although apparent cost savings may sometimes reflect explicit or implicit price discrimination by professions (an example would be routine services that are used to subsidize non-routine services).

The real issue is whether there is any way to keep firms that produce professional services in a non-professional mode from exceeding their level of competence. These firms will always be tempted to accept clients whom they cannot really take care of properly, rather than turn away business. Malpractice suits may help to reduce such behavior, the more so since professionals are unlikely to suffer from the inhibitions they have about testifying against their colleagues. But controls on the services that firms are allowed to produce are also likely to be necessary, partly to provide a sound legal basis for suits, partly because there may be many abuses which though too small to justify a law suit, may still impose considerable costs on consumers.

3. The Historical Development of Paraprofessionals

The history of paraprofessions is tied to the history of professions; paraprofessional occupations have developed largely in response to the needs and problems of professions. This section sets out a discussion of the history of paraprofessions and considers how that history sheds light on the paraprofessions under review.

Compared with most professions, paraprofessions are relatively recent. But many professions are not themselves that ancient, at

least in terms of organizational history. Medicine and law date back to the 18th century; others, such as architecture, engineering and accounting, are more recent. Efforts to establish systems of professional control in architecture, engineering and accounting did not begin until the late 19th century. These efforts generally follow a pattern described by sociologists such as Gilb, and are led by voluntary professional associations.[20] At first, associations set up a private system of certification for their members; they seek government certification, and finally occupational licensure, under the banner of consumer protection and higher quality standards. Consumers are rarely involved, though they are invariably held out to be the beneficiaries.

In Ontario, voluntary professional associations began to be established in architecture, accounting and engineering at the provincial level for the first time during the 1880's. Government certification and licensure came later. Architects were certified by the government in 1890 and licensed in 1931. Engineers obtained government certification in 1922 and licensure in 1937. Accountants have been licensed since 1950.

Paraprofessional occupations are a 20th century phenomena in all of the main professional areas (the health industry is an exception if one includes nursing under this heading.) Until the end of the 19th century, the technical skills required in professional occupations were fairly simple. Most professionals worked either alone or in small partnerships where opportunities for increasing the division of labor were limited. As a result, there was almost no use of lower-level technical personnel.

Three factors produced change. First, technology sharply increased the complexity of services produced by professionals in fields ranging from architecture to medicine; complexity in turn increased the demand for lower-level personnel in routine jobs, even in fields like law where there have not been major technological changes. Second, the market for professional services grew. Increases in firm size may have also been important in increasing demand for these types of personnel in some areas.

The third factor was new training programs for lower-level personnel. During the 1960's and 1970's public policies in Canada and the United States created a range of new programs for paraprofessionals in community colleges and technical institutions. Closely associated with the so-called "new careers" movement, these programs were designed to create new opportunities for secondary school graduates. In many areas they have increased the supply of paraprofessionals, not always with commensurate increases in employment opportunities.

The health industry was the first to make regular use of paraprofessionals. Their emergence was closely linked to the introduction of new technology and the increasing concentration of production in hospitals and clinics. In the early 19th century, physicians had little or no technical assistance from lower-level personnel. During the late 19th century, nurses began to provide a wide variety of skilled services to patients and by World War I, a whole range of new, subordinate technical personnel had begun to develop, such as X-ray technicians, physical therapists and clinical laboratory personnel. The list has grown longer since World War II.

Paraprofessional occupations did not begin to develop in architecture, and engineering until World War II, and after. Paraprofessional organizations for both emerged in the 1960's. In both cases, the growth of paraprofessionals entailed a response to changes in technology that increased the demand for routine technical support tasks.

The case of law is somewhat at variance with engineering and architecture. Legal secretaries, whether so named or not, have certainly performed para-legal work for a long time; it is, however, only recently that they have sought formal recognition and established professional organizations; the Ontario organization dates from 1974. Law clerks, a well-established occupation in England, established a foothold in Ontario during the Second World War, in part because of the war-induced manpower shortage that reduced the supply of lawyers. Community legal workers are a phenomenon of the 1960's, and emerged out of the anti-poverty programs initiated in both the U.S. and Canada.

Paraprofessionalism in accountancy is less clear than in the three other occupations under review. The profession divides itself rather sharply into two groups: accountants in public practice who hold a license; and accountants employed in public practice, government and industry who do not hold a license. The qualifying body for accountancy, the Institute of Chartered Accountants of Ontario, is relatively old; it dates from 1883. The other two major accounting groups were provincially organized in 1941 and 1957. The most contentious issue at the moment concerns access to the public accountancy license; the debates over this question have tended to obscure the ques-

tions of paraprofessionalism as they meet our first definition of paraprofessional. Accounting firms do use lower-level personnel for accountancy tasks; but the numbers of such personnel are small, and they are not organized.

Taken as a group, paraprofessionals in architecture, engineering law and accounting play a relatively minor role when compared to the health industry. But there are important parallels between health and the four occupations under review, and the introduction and development of paraprofessionals follows a common pattern. In general, the introduction of subordinate personnel has allowed professionals to delegate unwanted, technical, routine activities and to concentrate on more skilled, better paying work that makes greater use of their expertise. However, the need to supervise lower-level personnel has also placed new demands on professionals' time. In general, direct compensation for supervising paraprofessionals has been low.

Professionals accordingly have strong incentives to minimize routine supervisory activities. One option is to delegate supervisory activities to non-professional administrators. But there are strong incentives for professionals to avoid delegation; the use of non-professional administrators tends to reduce professional control over the production process and can threaten professional independence. In the health industry, for example, power would move from physicians to hospital administrators. In other areas, it could lead to a transfer of power to office managers without professional degrees.

Professionals have usually preferred to try to solve administrative problems by encouraging the development of relatively autonomous occupations which perform specific technical tasks with a

minimum of supervision. This solution allows professionals to retain control over the production process and to reduce time spent on administrative activities. But, in the long run, it is a solution that generates challenges to professional control from within. Thus architectural technologists, engineering technologists, law clerks, and legal secretaries are now all questioning the authority of professionals in their respective fields and demanding a greater independence.

The dynamics of this process are easier to describe than to explain. Encouraging the development of semi-autonomous lower-level occupations under minimal supervision has two important effects over time. One is sharply segmented systems of labor market organization, with little or no vertical or even horizontal mobility between occupations, except through formal education programs. There is little evidence that paraprofessionals move easily and frequently from paraprofessional status to full professional status as doctors, lawyers, architects or engineers. Those who do so almost invariably accomplish the transition through formal education channels.

The second effect over time is the growth of a sense of professional identification in paraprofessional occupations, a development that frequently results in efforts to secure self-regulation.

The causes in both cases are closely related. Elaborate systems of on-the-job training to prepare workers for paraprofessional occupations require large investments of supervision by professionals. Such supervisory activities are not likely to yield returns that are as high as direct service activities with clients, partly for institutional reasons. Physicians, for example, often earn less for salaried super-

visory activities in hospitals than for direct care on a fee-for-service basis. In individual practices or smaller firms, the cost of on-the-job training can be higher than in formal training programs, while the quality may be lower. Under these conditions, entry requirements for paraprofessional occupations quite naturally tend to end up by emphasizing formal education programs.

Formal education requirements reduce mobility by making the move between occupations difficult without returning to school, and tend to increase self-identity in occupations and lead to the development of a professional creed. Voluntary paraprofessional associations, which are frequently established under the aegis of professional groups for the purposes of education and the promotion of standards, often promote the same results.

When paraprofessionals have little occupational mobility, but do have increased identity with their occupations, they often try to advance their own status by advancing that of their occupation -- either by increasing control over their work or by expanding its scope. Both strategies challenge the control of professionals. Such challenges rarely go unansered.

In architecture, engineering and law, paraprofessional groups are relatively new, but almost all have begun to develop a sense of professional self-identity. As noted earlier in our discusssion, most have now acquired some form of voluntary occupation association, and confrontations have already developed with professionals as paraprofessionals seek increased independence and expanded areas of work.

The likely outcome of these struggles is unclear. The decisions of the Professional Organizations Committee will clearly affect the outcomes. We may be able to anticipate future developments by looking at the histories of professional conflicts in the health industry, where they have a much longer history.

In the health industry, struggles involving paraprofessionals usually begin in the private sector and involve battles over the control of voluntary credentialling and accrediting institutions. More often than not, they end up by shifting to the public sector and follow the usual progression from government certification to licensure. Today, more than a dozen health occupations are certified or licensed by provincial or state governments in Canada or the United States.[21]

Consumer protection has always been the official justification for paraprofessional certification and licensure in the health industry. Rival occupations and an occasional government agency, rather than consumers, usually determine the needs and rights of consumers. The history of personnel regulation in the health industry is closely bound up with the conflicts over professional control.

A political market perspective on attempts to introduce regulation for paraprofessionals in the health sector suggests three distinctive patterns of behavior. First, regulation of paraprofessionals has sometimes been introduced at the request of government agencies, over the opposition of upper-level occupations. The goal of these efforts has been to serve the public interest, although the private interests of bureaucrats may also be involved. A second and more common pattern is for paraprofessionals to become certified or licensed at their own

behest. X-ray technologists, clinical laboratory personnel and physical therapists are all examples of lower-level groups that have successfully sought regulation at one time or another, often in the face of stiff opposition from occupations higher up in the professional hierarchy, such as physicians. These efforts to introduce regulation have been motivated mainly by the desire to enhance economic and social status.[22]

A third pattern is the use of personnel regulation to serve a colonial function; upper-level occupations use certification or licensure to reinforce their control over lower-level ones. Registered nurses, for example, have traditionally dominated licensure boards for practical nurses, and dentists have traditionally dominated boards for dental hygenists. In these cases, regulation has been motivated largely by the desire of upper-level occupations to forestall existing or potential attempts by paraprofessionals to increase their own independence.[23]

The dynamics involved in these three models of personnel regulation for paraprofessionals are not mutually exclusive. The introduction of regulation has often involved coalitions of groups like public health officials and members of occupations. Over time, the importance of various group efforts to seek further regulation has changed and sometimes their roles have even reversed. More than once, government agencies that originally supported the occupational regulation end up opposing it. Federal officials in the United States, for example, originally favored licensure laws as a way of maintaining quality

standards but are now questioning such regulation because of its impact on costs.[24]

Despite this somewhat confusing pattern, two trends stand out. First, the regulation of paraprofessionals has usually been followed by pressure for further regulation. Thus government certification of groups like nurses has usually been followed by attempts to impose licensure; the deregulation of paraprofessional groups is extremely rare. Second, whatever the original impetus behind regulation, the drive for professional self-regulation by paraprofessionals has been a dominant force throughout the health industry. The strategies involved have often been complex. Paraprofessionals have sought to use regulation to shift control to a more sympathetic body, (as, for example, from physicians to a government agency,) rather than to gain control directly themselves. The same motive has prompted requests to consolidate licensure laws under a single government body. But while the details of these maneuvers are not always easy to follow, their goal remains clear: to increase the autonomy of paraprofessional groups.

Personnel regulation in the health industry seems to have been self-accelerating. In the past, substantial lags often occured between the development of new technical occupations (such as X-ray technologists) and the initiation of regulatory efforts. But recently, new occupations like physicians' assistants have sought licensure as a matter of course, almost as soon as they appear. This pattern has become a source of growing concern not only to groups in the industry, but also to government policy makers in the United States; the federal government has called for a moratorium on new licensure laws

in the health industry.[25]

The history of regulation of health paraprofessionals obviously cannot provide a conclusive guide to developments in accounting, architecture, engineering or law. But three general conclusions seem in order. First, the use by professionals of lower-level technical personnel has led to the growth of paraprofessional occupations which quickly develop their own creeds, occupational identities and demands for self-regulation. Second, when we look to the future in architecture, accounting, engineering and law, the health industry experience suggests the likelihood of recurring conflicts between professionals and paraprofessionals; such conflicts are increasingly likely to be accompanied by demands for regulation of paraprofessionals.

Third, experience with paraprofessionals in the health industry strongly suggests that attempts to resolve these conflicts in architecture, engineering, law and accounting through the introduction of regulation are unlikely to be successful. The underlying problem is not the presence or absence of regulation; it is rather the segmented system of labor market organization that has developed as a result of professionalism. Labor market organization is the basic source of existing conflicts between professionals and paraprofessionals; it will continue to generate new conflicts as long as technology and market conditions change, as they inevitably will, and give rise to new groups of paraprofessionals.

The only way to end conflicts between paraprofessionals and professionals is to reorganize the market structures which generate these conflicts. Reorganization could be accomplished by moving to an inter-

nal labor market system where all employees are hired at entry-level jobs at the bottom of the career ladder and promoted from within. Thus, architects and engineers could all begin their careers as technicians, move on to become technologists, and finally achieve full professional status; no one would be hired directly from formal training programs above the level of technician. Quality could be regulated by licensing institutions rather than individuals. However, as we have already noted, the drastic reorganization of service production is not a panacea. Labor market reorganization may alienate professionals and undermine the values that professionalism has traditionally internalized. The result would then be a decline in the quality of services that institutional licensure might well be helpless to reverse.

The existing system of labor market organization may still, then, be the best alternative, even if it does generate conflict and create pressures for regulation that are difficult to control. Policy makers are left with the role of mediating conflict, rather than removing its sources. Such a role is neither comfortable nor satisfying; but it may be the most realistic choice.

Chapter Two

In this second chapter, we will use the theoretical and historical framework of the first chapter to consider specific policy issues regarding paraprofessionals in Ontario. For each of the four industries under review, we will first sketch the issues in dispute, and then present our policy suggestions.

Our recommendations for policies affecting paraprofessionals cannot be made independently of policies affecting professionals. We stressed this point at the outset of Chapter One; we repeat it here. While issues of professional regulation are beyond the scope of this paper, we must occasionally discuss how changes in professional regulation may affect the regulation of paraprofessionals. Public policy on the regulation of professionals is built around three basic options: 1) to deregulate professionals in some or all areas; 2) to leave unchanged the existing regulation of professionals; 3) to alter the present regulatory system. In each of the four industries under review, we will discuss specific paraprofessional issues in the light of possible changes in the regulation of professionals, as well as in terms of paraprofessionalism itself. Within each occupational area, we will discuss paraprofessional concerns serially.

But such a neat division and enumeration of issues does not, unfortunately, fully correspond to the realities of these four industries. Policy changes in one area will often have significant implications for another, and changes in the regulation of professionals will invariably have implications for the climate within which paraprofessionals work.

Engineering

A. Issues

Regulatory issues are vigorously in dispute within the engineering industry. Paraprofessional issues revolve around technologists and technicians; both are paraprofessionals in the sense of working with or for professionals. The quality of present services has not been an issue. Debate rather centers on the role of paraprofessionals within the industry and the nature of their relationship to the public (as manifest in the specific question of paraprofessional firms.) There have also been expressions of concern about the effects of the existing system of organization on occupational mobility.

Engineering technologists argue that they perform many of the tasks done by engineers, and that they therefore violate existing licensure laws. Technologists, who are not mentioned in the existing legislation, seek legal recognition; they also argue that they should be permitted to establish independent firms that will deal directly with the public. At present, they can be members of a firm with a licensed engineer, but cannot operate a firm on their own.

Some engineers admit that the wording of existing legislation may be outdated. But they are sceptical about the technologists' claims

of violating present licensure laws; their professional organization has not sought to make any prosecutions on these grounds. Engineers are also sceptical about the ability of firms operated solely by technologists to maintain quality standards. They contend that occupational mobility is available through an examination system. The Association of Professional Engineers argues, however, that it is not an educational institution and offers no courses to prepare for these examinations. Technologists must either prepare for them on their own or enroll in university courses.

Technologists regard these arguments as unpersuasive. In any case, they contend that the training required to become an engineer is neither necessary nor sufficient to engage in the specialized practices usually involved in the operation of a firm dealing directly with the public.

In the policy analysis that follows, we will discuss the paraprofessional issues in engineering by focussing on three questions; new paraprofessional credentials; paraprofessional firms; and bridging programs between paraprofessionals and professionals.

B. Policy Suggestions

The case can be and has been made for incorporating the recognition of technologists and technicians into the licensure law, in order to insure that the law reflects the realities of manpower utilization within the industry. Government certification or licensure of these personnel might well enhance their status and economic standing. But in the absence of any evidence that the present law seriously limits the use of such personnel within firms, or that serious quality problems

exist within the industry, we see no clear public gains from alterations in the regulatory climate that would include recognition of technologists and technicians. A purely legal argument does not in itself suffice, and the argument is in any case rendered weak by the absence of any prosecutions. We do recognize other grounds for switching from private to public certification, and will treat them shortly.

The issue of paraprofessional firms is complex. To prohibit them reduces flexibility and mobility; to allow them raises up a set of other issues and questions, and would probably entail the necessity, if present licensure policy is retained, of devising a system of paraprofessional credentialling. The issue of paraprofessional firms cannot be sensibly discussed without first treating questions about professional regulation. If engineering is deregulated, then the barriers to paraprofessional firms disappear; paraprofessionals could create their own firms and enter the market freely to supply engineering services (although Ontario building codes would still require the participation of an engineer or architect in all major projects.

If the existing regime of licensure is retained, it then might become necessary to devise a credentialling system for lower-level personnel who will be permitted to operate paraprofessional firms. The government might certify technologists and permit only certified personnel to create firms; or, it might set up special entry examinations for technologists who wished to establish firms. Either approach

has its own difficulties. Certification, as we have noted in Chapter One, invariably becomes a prologue for attempts to achieve licensure; such licensure would probably restrict mobility. Special entry examinations lend themselves to manipulation more readily than certification, in the interests of keeping potential entrants out. On balance, given the small number of technologists likely to establish firms of their own, we think the special entry examination approach to be the better one: it avoids setting in motion the far-reaching effects of a change from private to public certification for the occupation as a whole.

If speciality licensure is introduced for engineers, the creation of paraprofessional firms becomes simpler, provided that examinations for licensure are open to technologists as well as engineers. Most engineering firms that deal with the public are now highly specialized; paraprofessional firms could follow suit, and technologists could simply take examinations in the specialty in which they planned to practice. We should note two potentially undesirable consequences of speciality licensure, however. One is the introduction of yet another layer of credentials, with the attendant restrictions on mobility. The second is manipulation of examinations -- through the inclusion of theoretical knowledge not germane to the speciality in question -- to exclude paraprofessionals.

Improving "bridging" arrangements within engineering is desirable--but problematic. Systems of examinations oriented toward on-the-job training are one approach; to be effective, they will have to harness

the incentives of engineers to make them work, or else introduce outside representation to insure fairness and equity. A second approach, which could be combined with the first, is to develop community college training programs that are alternatives to present university programs. (This option, of course, raises issues of coordination and standardization.)

Deregulation of engineering would reduce, though not eliminate, the need for bridging programs. Maintaining the present regime, by contrast, entails the need for better articulation of bridging arrangements. Introduction of speciality licensure has mixed effects on mobility; if linked to changes that permit paraprofessional firms, then speciality licensure creates new opportunities. But it also imposes a new layer of credentials that create complications for mobility.

In summary, we have dealt with three forms of paraprofessional issues in engineering: new paraprofessional credentials; paraprofessional firms; and bridging programs. We do not think that new paraprofessional credentials for technologists or technicians as a group are an appropriate policy option; they create more problems than they solve. We do think that public policy in Ontario should encourage the creation of both paraprofessional firms and of improved bridging programs. Neither of the latter two recommendations are likely to have significantly undesirable impacts on quality in the market for engineering services; both do appear likely to improve efficiency and to lower the cost of services. While we have no reason to believe that the distribution of services would improve if paraprofessional firms and

improved bridging programs were introduced, both would, we think, have significant and desirable equity consequences.

Architecture

A. Issues

As in engineering, the main groups of lower-level personnel in architecture -- technicians and technologists -- are paraprofessionals in the sense of working with or for professionals. And, as in engineering, debates about paraprofessionals have revolved mainly around issues of mobility and of paraprofessional firms. However, the regulatory climate in architecture imposes more restrictions on the role of paraprofessionals than it does in engineering: Paraprofessionals in architecture cannot for practical purposes become architects without a university degree, and they are not allowed to enter into partnerships with architects.

The arguments in favor of increased occupational mobility and the creation of paraprofessional firms in architecture are similar to those in engineering in focussing on equity and efficiency issues. At a minimum, paraprofessionals have argued that they should be able to join architectural partnerships and that bridging arrangements ought to be improved. Architects themselves have resisted changes in these areas. Instead they have focussed on clarifying the distinctions in licensure laws between the practice of engineering and architecture rather than paraprofessional issues. Meanwhile, some critics have called for complete deregulation of the industry.[26]

B. Policy Analysis and Response

We can begin our discussion of policy measures that affect the issues of mobility and of paraprofessional firms by first considering changes in the regulation of professionals.

Architecture is a much smaller field than engineering; it has some 1600 professional practitioners, as against the 40,000 in engineering. There has been little discussion of speciality licenses. But, like engineers, architects also appear to sell most of their services to large, regular buyers who are relatively well informed about their purchases. We see little evidence of information problems in the market. As in engineering, building codes provide a supplemental (and potentially alternative) mode of regulation.

Supporters of deregulation argue that in the absence of serious quality problems, the industry should be deregulated, and government should simply certify professionals. Deregulation would remove the barriers to paraprofessional firms, although, as in the case of engineering, the building codes would probably limit such firms to secondary roles, since the codes require the participation of an architect or engineer in all major projects. And even if licensure were removed, it is possible that institutional barriers to occupational mobility might still remain in the market, for architectural services, in the form of an emphasis on formal credentials.

Policies to enhance mobility in architecture confront the same problems encountered in engineering. Effective bridging programs require the control of standards by people with incentives to make them work. The identification of training programs appropriate for para-

professionals poses difficulties. While community colleges could provide this training, problems of coordination and of standardization combine to make a system of independent examinations and special supplementary courses a more attractive alternative.

If architects continue to be licensed under the existing system, some type of credential would be required for paraprofessionals in order to allow them to create independent paraprofessional firms. As in the case of engineers, a special examination seems preferable to general government certification of these personnel.

Regulatory experience with engineering suggests that no new type of credential seems necessary to allow paraprofessionals to enter into partnerships with professionals in architecture; private, voluntary certification seems sufficient.

Neither increased mobility nor the introduction of paraprofessional firms is likely to dramatically change the quality of architectural services.[27] Building codes will remain as a force to uphold certain standards of quality, and to require the participation of both engineers and architects in construction. However, policy changes affecting mobility and paraprofessional firms might increase efficiency and lower the costs of services -- if the changes result in task allocations that match training and skill with work assignments. The policy changes could also have important equity effects, assuming that Ontario continues to license architects.

Law

A. Issues

Paraprofessional issues in the legal services industry are of two sorts. One involves law clerks and legal secretaries; both are paraprofessionals in our first sense in that they work for or with professionals within the traditional setting of a law firm. The second set of issues involve community legal workers, who work in community-based rather than law firm settings, and who work with lawyers in a less formally prescribed relationship; they also affect free-lance law clerks who perform conveyancing and title services independently.

Both law clerks and legal secretaries consider themselves to be legal assistants, or, as the law clerks phrase the role, legal executives. Both draw upon the same body of precedent and experience to support their claim to paraprofessional status, and to forms of recognition drawn from the professional model. Both groups work on the same occupational ground, and are concerned with establishing in a more formal and explicit way the rights and responsibilities of their roles. Neither challenges the regulatory hegemony of the Law Society of Upper Canada.

Both the law clerks and the legal secretaries are concerned with quality issues to the extent that they believe that improvement and clarifications in their own status will result in improved quality and lower cost of services to clients. The community legal services workers -- and the lawyers with whom they work -- are directly concerned, by contrast, with the present quality of services and with the distribution (or, in their terms, accessibility) of legal services.

While there exists no explicit statutory prohibition of incorporation, a reasonable interpretation of The Law Society Act would appear to preclude corporations from practising law, and in fact law firms traditionally have not incorporated. The issue of paraprofessional firms does not arise directly in the definition of issues and of arguments from either law clerks or legal secretaries. It is however implicit in the arguments of those who favor forms of deregulation that would acknowledge the de facto divisions of labor within the legal services industry and would loosen the present monopoly on legal services by lawyers.[28]

B. Policy Suggestions

The paraprofessional issues that arise in the case of law clerks and legal secretaries affect questions of the cost and efficiency of manpower utilization. Both groups rest their arguments for more formal recognition of their roles largely on the grounds of specialization: each contends that it is able to perform competently in certain specialized areas where the lawyer's more extensive training is not required, and that the exercise of such competence supplements the work of lawyers in ways that reduce client costs and increase efficient manpower utilization within law firms.

As long as law clerks and legal secretaries continue to work under the supervision of lawyers within the present regulatory climate, it is not clear why such specialization should lead to licensure or certification. Under the present licensure regime, such a step would have uncertain benefits and predictable costs. If, however, certain measures of deregulation were instituted, such that the monopoly presently enjoyed by lawyers were reduced in scope, and confined to

a more restricted range of legal services, then a certification program for paraprofessionals might well be both necessary and beneficial.

To abjure paraprofessional certification within the present regime of licensure is not to ignore legitimate questions about the quality of training for legal paraprofessionals or questions about bridging between paraprofessionals and professionals. While community colleges in Ontario do provide courses in paralegal training, the effectiveness of such training seems to be blunted by the continuing ambiguities and controversies about definition and divisions of labor within law firms; moreover, law firm hiring policies suggest that informal modes of training are sometimes considered to be as effective as formal education programs; Ontario law firms in the past hired as law clerks people who have worked as legal secretaries and insurance adjusters as well as graduate lawyers ineligible (often for citizenship reasons) to practice law.[29]

It seems clear then, that both formal and informal training provides an ample supply of candidates for paralegal positions within the law industry. What is more at issue is the ability of paralegals to make the transition from paraprofessional status to full professional status. A university law degree is presently required of anyone who wishes to become a member of the Law Society and to practice law. The division between paraprofessional status and professional status is a clear and unambiguous one; the issues and disputes within the legal services industry are almost entirely about divisions of labor and responsibility within the ranks of paraprofessionals. Bridging programs between the paraprofessionals and the professionals do not

presently appear to be a significant issue. But this is not to say that bridging is a trivial matter. The issue presents itself in two forms. One is the traditional form: bridging between paraprofessional and professional status. In this form, the legal bridging issue has not received much attention; we suggest that it should receive some attention.

A second issue of mobility is involved in the question of paraprofessional firms. Under the present regulatory regime, paraprofessionals can neither be partners in law firms, nor create their own firms. If the regulatory structure were altered, so that paraprofessionals could be principals in firms, or could create their own firms, then a form of professional opportunity is opened up. Such a move presumes something of a reorganization of the market in areas like conveyancing.

In a limited way, the market has already undergone some reorganization in the area of community legal services. This is a new mode of providing legal services to those who had not previously utilized existing services. The nature of the issues raised by paraprofessionals in this area, is, not suprisingly, different in nature from those raised by law clerks and legal secretaries. The community legal workers are concerned about accountability and funding. They would like to alter the basic auspices under which they work and to shift the lines of accountability away from the Law Society and toward the communities whose residents they serve. They are also concerned to secure an adequate and dependable funding source.

Viewed in its entirety, the legal services industry presents a curious situation. On the one hand, the regulatory climate is rather calm. There is no evidence of any widespread interest in altering the present regulatory regime, in which the Law Society plays a dominant role. On the other hand, there is considerable ferment among both paraprofessionals within the law firm setting, and among community legal workers outside the law firm setting.

Since the actions taken by the Law Society, Ontario law schools, private philanthropies and government agencies combine to acknowledge the need for alternative ways of providing legal services, the present organizational scheme for the supervision and funding of community legal workers seems inappropriate. More to the point, it is likely to engender continuing battles. A more appropriate posture would be to bring the de facto position of community legal workers into closer alignment with the de jure climate by making community legal workers a more fully public enterprise, supervised and funded by a public or quasi-public body.

We recommend that more attention be paid to bridging programs that would enable paraprofessionals to achieve full professional status. And we recommend that community legal workers be supervised and funded by a publicly-constituted body. But we do not recommend that governmental actions be taken under the present regulatory regime to certify law clerks and legal secretaries, unless the need arises in connection with paraprofessional firms.

As in the case of engineering and architecture, the resolution of paraprofessional issues will often hinge on decisions about professional regulation. Our recommmendations assume no significant change in the present regulatory regime in law. If the regime were changed, such that the present control exercised by the Law Society over the practice of law were altered and new opportunities for paralegal personnel were created, then public policy on the regulation of paraprofessionals becomes a different matter. Under such conditions, government certification of paralegals might well be called for.

Accountancy

A. Issues

Paraprofessional issues in accountancy come in two forms. The first is paraprofessionalism in our first definition: a subordinate employee working for and responsible to a superordinate professional.

The second form of paraprofessionalism involves our second definition of paraprofessionalism: the absence of a crucial attribute skill or element of training. It is this issue that divides the Chartered Accountants from the Certified General Accountants. The crucial attribute in this case is the public accountancy license. At present, licensure is restricted to the membership of the Chartered Accountants' professional association, the Institute of Chartered Accountants of Ontario (ICAO). The CGA's would like to widen access to the license.

We see the origins of the problem in the fact that Chartered Accountants have secured something of a monopoly on a scope of practice that confers competitive advantage. Their monopoly, however,

is based not on a full range of services but rather on several key functions within that range. The band of regulatory intervention is narrow, whereas the consequences of that intervention are broad.

B. Policy Suggestions

Paraprofessionalism in our first definition does not seem to be a pressing issue. Paraprofessionals do exist in accountancy; in some cases, they are technicians who have been trained on-the-job, or employees who have not passed requisite examinations. The ICAO supports the idea of a paraprofessional training sequence and the idea of a bridging program whereby paraprofessionals can become accountants. No one has sought either licensure or certification; none seems needed.

The question of paraprofessionalism in our second sense is another matter. The division of labor within accountancy now seems reasonably efficient; so too does the organizational structure, which involves three principal accountancy groups, each composed of accountants competent to perform a specified range of functions. The public interest attaches itself to "attest" functions, which involve financial documentation upon which third parties depend in making important decisions, and which are currently licensed.[30]

Licensure in the case of accounting confers a competitive advantage. The public policy question to be resolved is how government can protect the public without involving itself in the accounting market in a way that confers competitive advantage. One option,

advanced by two authors of an analytic study of accounting for the POC, is deregulation. The third author in the analytic study argues for continued -- but revised -- regulation.[31] We do not feel compelled to choose between the two positions. Our only comment is that the present situation is unsatisfactory, both for those accountants who feel deprived of access to licensure, and for government, which will have to continue to play a continuing mediatory role if it does not take action to devise an acceptable solution.

Footnotes

[1]Carolyn J. Tuohy and Alan D. Wolfson, "The Political Economy of Professionalism: A Perspective," in Four Aspects of Professionalism (Ottawa: Consumer Research Council of Canada, 1977).

[2]See, for example, E. Greenwood, "Attributes of a Profession," Social Work, II 3 (July, 1957; M.L. Cogan, "Toward a Definiton of Professions," Harvard Educational Review, XXIII (1953).

[3]A well argued exposition of this position is found in Terence J. Johnson, Professions and Power (London: The Macmillan Press, 1972), pp. 41-47.

[4]The authors' interviews with representatives of Ontario professional organizations revealed some reluctance to consider "social audits" a proper responsibility or function of professional organizations.

[5]P. Doeringer and M. Piore, Internal Labor Markets and Manpower Analysis, (Lexington, Mass.: D.C. Heath, 1971).

[6]See Amitai Etzioni, ed., The Semi-Professions and Their Organization: Teachers, Nurses, Social Workers (New York: The Free Press, 1969).

[7]We list at the outset of each sketch, the principal sources from which we drew information to write each sketch. For engineering, the following documents were used:

Appendix D to the Research Directorate's Staff Study, "History and Organization of the Engineering Profession in Ontario (1978).

Donald Dewees, Stanley Makuch, Alan Waterhouse, An Analysis of the Practice of Architecture and Engineering in Ontario, Working Paper #1 prepared for the Professional Organizations Committee (1978).

Goodings, Sidlofsky, Goodings and Associates, Ltd., The Engineering Technician (A Study for the Ministry of Colleges and Universities, Province of Ontario, March 1977).

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Association of Professional Engineers (A.C. Cagney, Executive Director), Letter to H. Allan Leal, Q.C. of July 7, 1977.

Committee of Ontario Deans of Engineering (A.I. Johnson, Chairman) Letter to H. Allan Leal, Q.C. of May 24, 1977.

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----------, Response to Working Paper #1, July 13, 1978.

----------, Realities and Responsibilities, Brief to the Professional Organizations Committee, Ministry of the Attorney General, Province of Ontario, October 31, 1977 .

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----------, "Utilization of Technical Manpower," (Report on a Seminar, June 16-17, 1975).

Philip A. Lapp, Ltd., Utilization of Engineering Manpower -- Case Studies in Selected Areas (Study conducted for the Association of Professional Engineers of Ontario, August 1977).

M.L. Skolnik and W.F. McMullen, An Analysis of Projections of the Demand for Engineers in Canada and Ontario, and, An Inquiry into Substitution between Engineers and Technologists (A Report Submitted to the Committee of Presidents of Universities of Ontario, November 1970).

[8]Goodings, et al., The Engineering Technician; Goodings, et al., The Engineering Technologist.

[9]See "Division of Functions by the National and Provincial Bodies of Chartered Accountants."

[10]Information presented in this sketch was drawn from the following documents:

Donald Dewees, Stanley Makuch, Alan Waterhouse, An Analysis of the Practice of Architecture and Engineering in Ontario, Working Paper #1 prepared for the Professional Organizations Committee (1978).

Appendix C to the Research Directorate's Staff Study, "History and Organization of the Architectural Profession in Ontario"(1978).

Ontario Association of Architects, letter to H. Allan Leal, Q.C., July 14, 1977.

Association of Architectural Technologists of Ontario. Letter to Professional Organizations Committee, December 30th, 1977.

_____, AATO's comments on Working Paper #1, July 12, 1978.

[11] Dewees, et al., Analysis, pp. 172-173.

[12] Information presented in this sketch was drawn from the following documents:

Appendix B to the Research Directorate's Staff Study, "History and Organization of the Legal Profession in Ontario" (1978).

Selma Colvin, David Stager, Larry Taman, Janet Yale, Frederick Zemans, The Market for Legal Services: Paraprofessionals and Specialists, Working Paper #10 prepared for the Professional Organizations Committee (1978).

Law Society of Upper Canada, Division of Functions in the Legal Professions, nd

Institute of Law Clerks of Ontario, Intermediate Brief to the Professional Organizations Committee, February 1978.

Committee of Community Legal Workers, Community Legal Workers in the Delivery of Legal Services, Brief to the Professional Organizations Committee, 1978.

Neighborhood Legal Services, Brief to the Professional Organizations Committee, 1977.

Clinic Programme, Faculty of Law, University of Toronto, Brief to the Professional Organizations Committee, nd.

Metropolitan Toronto Legal Secretaries Association, Intermediate Brief to the Professional Organizations Committee, October 31, 1977.

_____, Letter to Allan Leal, Q.C., July 19, 1978, with enclosed materials on para-legal education.

_____, Letter to T.R. Marmor and W.D. White, September 27, 1978.

[13]Information presented in this sketch was drawn from the following documents:

Appendix A to the Research Directorate's Staff Study, "History and Organization of the Accounting Profession in Ontario," (1978).

Fred Lazar, J. Marc Sievers, Daniel B. Thornton, An Analysis of the Practice of Public Accounting in Ontario, Working Paper #8 prepared for the Professional Organizations Committee (1978).

Institute of Chartered Accountants of Ontario, Brief to the Professional Organizations Committee, (December, 1977).

Institute of Chartered Accountants of Ontario, letter to H. Allan Leal, Q.C., June 10, 1977.

Society of Management Accountants of Ontario, Letter from E.W. Scott, Executive Director, to H. Allan Leal, Q.C., June 9, 1977.

[14]Michael Spence, Entry, Conduct and Regulation in Professional Markets, Working Paper #2 prepared for the Professional Organizations Committee (1978), pp. 4-5.

[15]Tuohy and Wolfson, Political Economy of Professionalism, op.cit., pp. 67-68.

[16]Spence, Entry, Conduct and Regulation, op.cit., p. 35.

[17]Milton Friedman, Capitalism and Freedom, (Chicago: University of Chicago Press, 1962).

[18]The arguments for and against malpractice suits as an incentive to competence are summarized in Edward P. Belobaba, Civil Liability as a Professional Competence Incentive, Working Paper #9 prepared for the Professional Organizations Committee (1978).

[19]N. Hershey, "An Alternative to Mandatory Licensure of Health Professionals," Hospital Progress, v. 50, March 1973.

[20]C. Gilb, Hidden Hierarchies: The Professions and Government (New York: Harper and Row, 1966).

[21]U.S. Department of Health, Education and Welfare, Report on Licensure and Related Health Personnel Credentialling. (DHEW Publication No. (HSM) 72-11. (Washington, D.C.: U.S. Government Printing Office, 1971).

[22]For detailed discussions of attempts to introduce licensure in allied health occupations, see, for example, C. Brown, The Development of Occupations in Health Technology, National Technical Information Service, U.S. Dept. of Commerce, Publication PE-197 690, or W. White, Public Health and Private Gain: The Economics of Licensing Clinical Laboratory Personnel, forthcoming, (Chicago, Ill.: Maaroufa Press, 1979).

[23]U.S. Public Health Service, State Licensing of Health Occupations, Public Health Service Publication No. 1978 (Washington, D.C.: U.S. Government Printing Office, 1968).

[24]U.S. DHEW, Licensure and Credentialling, p.25.

[25]Ibid.

[26]Architects in Ontario are reluctant to support the idea of paraprofessional firms; they claim that the paraprofessionals' interest in creating their own firms is limited to the benefit side and that paraprofessionals are less interested in assuming the liabilities that are associated with full partnerships. Interviews with technologists suggest that, to the contrary, technologists are willing to assume the risks as well as the benefits. Authors' interviews, October, 1978. (See Appendix A to this Working Paper, p. 58.)

[27]We should note that the impact of paraprofessionals' firms and of increased mobility or quality is a matter of some considerable dispute.

[28]Colvin, et al., Market for Legal Services, pp. 414-415.

[29]Ibid., pp. 273-275.

[30]A full enumeration of licensed and unlicensed accountancy functions is provided in Chapter 1, pp. 14-16.

[31]Lazar, et al., Analysis of the Practice of Public Accounting, op.cit., pp. 292-330.

APPENDIX A

Following is a list of organizations and individuals interviewed by Theodore Marmor and William White during the preparation of this Working Paper:

Association of Architectural Technologists of Ontario

Association of Professional Engineers of Ontario

Institute of Law Clerks of Ontario

Law Society of Upper Canada

Metropolitan Toronto Legal Secretaries Association

Ontario Association of Architects

Ontario Association of Certified Engineering Technicians and Technologists

Professor Richard Gathercole
Director, The Clinic Programme
Faculty of Law, University of Toronto

Professor Larry Taman
Associate Dean, Osgoode Hall Law School

Ms. Susan Tanner
Provincial Office for Legal Aid

Ms. Rosalind Waters,
Mr. Nelson Clarke,
Mr. Alec Farquar,
Committee of Community Legal Workers

Ontario

Ministry of the Attorney General

Professional Organizations Committee

102 Bloor Street West
Suite 320
Toronto, Ontario
M5S 1M8
416/965-2740

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